

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BILLY RUIZ,
Petitioner,
v.
W.L. MOTGOMERY,
Respondent.

} Case No. SA CV 13-1641 BRO (JCG)

} **ORDER ACCEPTING REPORT AND**

} **RECOMMENDATION OF UNITED**

} **STATES MAGISTRATE JUDGE AND**

} **DENYING CERTIFICATE OF**

} **APPEALABILITY AND**

} **EVIDENTIARY HEARING**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Petition (“FAP”), the Magistrate Judge’s Report and Recommendation, Petitioner’s Objections to the Report and Recommendation, and the remaining record, and has made a *de novo* determination.

Petitioner's Objections reiterate the arguments made in the FAP and Reply, and lack merit for the reasons set forth in the Report and Recommendation.

Accordingly, IT IS ORDERED THAT:

1. The Report and Recommendation is approved and accepted^{1/};
 2. Judgment be entered denying the FAP and dismissing this action with prejudice; and

^{1/} The Court also construes the Magistrate Judge’s December 20, 2013 minute order granting in part Petitioner’s stay request as a Report and Recommendation, and adopts it.

3. The Clerk serve copies of this Order on the parties.

2 Additionally, for the reasons set forth in the Report and Recommendation, the
3 Court finds that Petitioner has not made a substantial showing of the denial of a
4 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
5 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
6 appealability.

7 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
8 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court-
9 decision at the time it was made. It follows that the record under review is limited to
10 the record in existence at that same time *i.e.*, the record before the state court.”).

11

12 || DATED: August 7, 2015



HON. BEVERLY REID O'CONNELL
UNITED STATES DISTRICT JUDGE